

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.358 OF 1985

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

M/s. Jyoti Electric Motors Ltd.
Versus
Workmen through Kheda Jilla Factory Kamdar Union & Anr.

Appearance:

MR SK JHAVERI for Petitioner
None present for Respondents

Coram: S.K. Keshote,J
Date of decision:21.1.97

C.A.V. JUDGMENT

Heard learned counsel for the petitioner and perused the Special Civil Application.

2. On an industrial dispute raised by the respondent

No.1, the State Government made a reference for adjudication thereof to the Industrial Tribunal, Gujarat, at Ahmedabad. The reference was "The workers should be paid full pay for the period of lock-out from 12.9.77 to 20.11.77". The workmen have gone on strike from 7.9.77 in connection with demand for the bonus. The Tribunal has held that the strike of the workmen was illegal. The Tribunal has further held that since the strike is illegal, the lock-out declared in consequence of it is not illegal as per Section 24(3) of the Industrial Disputes Act, 1947. The Tribunal has further held that the lock out from 12.9.77 to 20.11.77 is not illegal. After giving this finding, the Tribunal has made Award whereunder the petitioner-management has been directed to pay 50% wages to the workmen including staff members for the period of lock out. That decision has been given on the basis that the lock out which was imposed on 12.9.77 out of an apprehension that damage to plant and machinery may be caused continued for well over two months. The continuation of lock out for two months was held to be unreasonable and unjustified. Another reason has been given that there was no untoward incident or violence and the workmen had remained peaceful. So though the strike was declared to be illegal, the lock out that followed was declared unjustified because of its long duration. So in sum and substance, the Tribunal has given direction for 50% payment of wages to the workmen including staff members for the period of lockout only on the ground that the long duration of lock out was unjustified and unreasonable.

3. The Tribunal has not considered one important aspect that at no point of time, the respondent No.1 has called off its strike. The matter would have been different that the strike is called off specifically and still the petitioner continued the lock out, which is not the case here. Though the reason given by the learned counsel for the petitioner, that the management could not produce its evidence before the Tribunal on its behalf, for providing further opportunity to the petitioner may not be sufficient, but the petitioner has brought on record in the form of affidavit, glaring facts which have not been controverted by the respondents. As these facts stand uncontroverted and also come from Senior Industrial Relations Officer of the petitioner, the same are to be taken into consideration. A copy of this affidavit was given to the learned counsel for the respondent No.1 way back on 12th September, 1995, and though more than one year has passed no reply has been filed. After declaration of lock out from 12th September 1977 the matter was taken up before the Assistant Labour

Commissioner, Nadiad, on 19th September 1977, 23rd September 1977 and on 3rd October 1977 before the Deputy Labour Commissioner. During all these three occasions, the management clarified that if the workmen are prepared to work peacefully for production, the company is prepared to lift the lock out with immediate effect, but on behalf of the Union, improper conditions were sought to be advanced and they insisted not to give the undertaking, but reiterated that they would continue the sit-down strike. A public notice was not only put on the notice Board, but was also got published in the daily newspapers 'Sandesh', 'Gujarat Samachar' and 'Lok Satta' on 3rd November 1977. Even then there was no response from the workmen. Again on 16th November 1977 the company placed on the Notice Board that the management has lifted lock out with effect from 21st November 1977 and the workmen should attend work from 21st November 1977 from the first shift onwards. This notice was also got published in different daily newspapers, 'Lok Satta' on 17th November 1977 and 'Sandesh' and 'Gujarat Samachar' on 18th September 1977. It has further been clarified that on failure to attend the job, the company will proceed to take action on the basis that the concerned workmen does not want to continue his service in the factory. In pursuance to that notice, the workmen attended the factory, but continued their sit down strike and Union wrote the letter dated 25th November 1977 for cooperation and insisted upon the payment of bonus and withdrawal of all inquiries against individual workmen and orders of suspension and payment of wages for the period of lock out to which the company by its letter dated 29th November 1977 informed that the allegations made in that letter were totally false and reiterated that the company will pay the bonus in accordance with law and that notice to that effect is already placed on Notice Board on 25th November 1977. During the preliminary discussion on 29th September 1977 before the Assistant Commissioner of Labour, Nadiad, the factum of continuing sit down strike by the workmen was pointed out and the Assistant Labour Commissioner wanted Union representative, Shri Parmar to resume work and give normal production and suggested that after 10 days of his resumption and normal production, the pending charge-sheets and suspension cases can be taken into further discussion. The Union did not agree thereto and insisted upon its conditions. The company has again put on Notice Board on 25th, 28th November 1977, 3rd December 1977, 6th December 1977, a notice stating that even though lock out is lifted with effect from 21st November 1977, the workmen even though are remaining present, but are not working.

4. Taking into consideration the aforesaid facts, it cannot be said the the lock out was of long duration. The petitioner has made all efforts for resumption of work by the workmen earlier to 21st November 1977, but the workmen still persisted to their conditions. Thereafter lock out has been lifted, but still the workmen remained on illegal strike. The learned counsel for the petitioner placed reliance on two decisions of the Hon'ble Supreme Court in the case of Bank of India v. T.S. Kelawala & Ors., reported in (1990)4 SCC 744 and in the case of Syndicate Bank & Anr. v. K. Umesh Nayak, reported in AIR 1995 SC 319. In both these aforesaid decisions, the Hon'ble Supreme Court has held that irrespective of the fact whether the strike is legal or illegal, the workmen are not entitled for wages for the strike period. The principle as laid down by the Hon'ble Supreme Court in the aforesaid two cases, "no work no pay" has to be given effect to.

5. In the result, this Special Civil Application succeeds and the same is allowed. The Award of the Industrial Tribunal, Gujarat, in Ref.(IT) No.98 of 1978 is quashed and set aside. Rule made absolute. No order as to costs.

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